

SENATE BILL REPORT

SB 5354

As of February 26, 2007

Title: An act relating to the scope of agency actions under the administrative procedure act.

Brief Description: Concerning the scope of agency actions under the administrative procedure act.

Sponsors: Senators Kline, Poulsen, Weinstein, Pridemore and Kohl-Welles.

Brief History:

Committee Activity: Judiciary: 1/30/07.

SENATE COMMITTEE ON JUDICIARY

Staff: Dawn Noel (786-7472)

Background: The Washington Administrative Procedure Act (APA) permits a party to obtain judicial review to challenge "agency action." Current law broadly defines "agency action" as licensing, the implementation or enforcement of a statute, the adoption or application of an agency rule or order, the imposition of sanctions, or the granting or withholding of benefits. Current law excludes certain agency decisions from the definition of "agency action," such as "any sale, lease, contract, or other proprietary decision in the management of public lands." In *Department of Natural Resources v. State Owned Forests*, the Washington Court of Appeals determined that, based on this proprietary exemption, a three-year extension of a forest resource plan developed by the Department of Natural Resources (DNR) was not "agency action" eligible for judicial review under the APA.

Summary of Bill: The Legislature intends by this act to ensure that in all future planning decisions, the requirements of the APA will apply. The proprietary exemption is narrowed to "any sale, lease, or contract decision in the management of public lands," thereby excluding other types of proprietary decisions concerning the management of public lands.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The purpose behind the APA is to promote transparency in agency decision-making. The APA applies to all actions of state government, and is a critical due process law. The APA provides for notice of hearings, public access

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requirements, the ability to appeal, and rules governing appeal of state agency decisions. DNR's general land management decisions are extremely important ones that will affect public lands far into the future.

We see this bill as a technical fix. We believe the bill clarifies that the planning process would be subject to the APA like other practices. The bill would continue to exempt specific agency business transactions such as sales, leases and contracts. But DNR's land management decisions would be subject to the APA. We believe that these decisions should be exposed to the public. We don't believe this bill will burden DNR's business decisions.

CON: The origin of the proprietary exemption under the APA recognizes that the state wears many different hats, such as a proprietary hat. The exemption operated as an assurance to business partners of DNR that transactions with the agency would be reliable. Yet DNR continues to conduct these transactions openly. DNR held many meetings with stakeholders regarding the plan at issue in the case. This bill is unnecessary, and would generate confusion in an area where things are working well. For example, the bill might subject one phase of proprietary decision-making to a different standard of judicial review. Another avenue of judicial review already exists for plaintiffs in the form of seeking a constitutional writ.

Persons Testifying: PRO: Senator Kline, prime sponsor; Clifford Traisman, Washington Environmental Council, Washington Conservation Voters; Miguel Perez-Gibson, Washington Forest Law Center.

CON: Craig Partridge, Department of Natural Resources.